

Federal Housing Finance Board

§ 908.10

the United States. Any court having jurisdiction of any proceeding instituted under this section by a Bank may allow to any such party such reasonable expenses and attorneys fees as the court deems just and proper. Such expenses shall be paid by the Bank or from its assets.

§ 908.9 Hearings on the record.

(a) *Requirements*—(1) *Venue and record*. Pursuant to section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) and section 1373 of the Safety and Soundness Act (12 U.S.C. 4633), any hearing conducted pursuant to §§ 908.4 or 908.6 shall be held on the record and in the District of Columbia.

(2) *Timing*. Any hearing shall be set for a date not earlier than thirty (30) days nor later than sixty (60) days after service of a notice, unless an earlier or a later date is set by the presiding officer at the request of the party served.

(3) *Procedure*. Any hearing held pursuant to §§ 908.4 or 908.6 shall be conducted in accordance with chapter 5 of Title 5 of the United States Code.

(4) *Failure to appear*. If a respondent fails to appear at a hearing individually or through a duly authorized representative, the respondent shall be deemed to have consented to the issuance of a cease and desist order or an order assessing a civil money penalty for which the hearing is held.

(5) *Open to the public*. All hearings on the record with respect to any notice issued by the Finance Board shall be open to the public, unless the Board of Directors, in its discretion, determines that holding an open hearing would be contrary to the public interest.

(b) *Issuance of final order*. After a hearing on the record has been concluded, and within 90 days after the parties have been notified that the case has been submitted to the Board of Directors for final decision, the Board of Directors shall render the final decision (which shall include findings of fact upon which the decision is predicated) and shall issue and serve upon each party to the proceeding a final order or orders consistent with the provisions.

(c) *Judicial review and modification of final orders*. Judicial review of any such final decision and order shall be exclu-

sively as provided for in § 908.10, pursuant to section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) and sections 1373 and 1374 of the Safety and Soundness Act (12 U.S.C. 4633 and 4634). Unless a petition for review is timely filed as provided in § 908.10, and thereafter until the record in the proceeding has been filed as so provided, the Board of Directors may at any time modify, terminate, or set aside any such final decision and order, upon such notice and in such manner as the Board of Directors, in its sole discretion, considers proper. Upon such filing of the record, the Board of Directors may modify, terminate, or set aside any such final decision and order with permission of the court.

§ 908.10 Judicial review.

(a) *Authority*. Pursuant to section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) and section 1374 of the Safety and Soundness Act (12 U.S.C. 4634), any party to a hearing may obtain judicial review of a final decision and order issued under §§ 908.4 or 908.6 exclusively by filing a written petition in the United States Court of Appeals for the District of Columbia Circuit within thirty (30) days after the date of service of the final decision and order, requesting the court to modify, terminate or set aside the final decision and order.

(b) *Filing of record*. Upon receiving a copy of the petition from the clerk of the court of appeals, the Finance Board shall file the hearing record with the clerk, as provided in section 2112 of Title 28 of the United States Code (28 U.S.C. 2112).

(c) *Jurisdiction*. Pursuant to section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) and section 1374(c) of the Safety and Soundness Act (12 U.S.C. 4634(c)), upon the filing of a petition, the court of appeals shall have jurisdiction, which upon the filing of the record by the Finance Board (except as otherwise provided in § 908.9) shall be exclusive, to affirm, modify, terminate or set aside, in whole or in part, a final decision and order of the Board of Directors.

(d) *Review*. Review by the court of appeals of a final decision and order of the Board of Directors and the record of any hearing conducted pursuant to

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this part shall be governed by chapter 7 of Title 5 of the United States Code (5 U.S.C. 701 *et seq.*).

(e) *Order to pay civil money penalty.* In connection with its review of a final order pursuant to this part, the court of appeals shall have authority in accordance with section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) and section 1374(e) of the Safety and Soundness Act (12 U.S.C. 4634(e)), to order payment of any civil money penalty imposed by the Finance Board.

(f) *No automatic stay.* In accordance with section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) and section 1374(f) of the Safety and Soundness Act (12 U.S.C. 4634(f)), the commencement of an action for judicial review of a final decision and order of the Board of Directors under this section shall not operate as a stay of any such order, unless the court of appeals specifically orders a stay of the order in whole or in part.

§ 908.11 Jurisdiction and enforcement.

(a) *Enforcement.* In accordance with sections 2B(a)(5) and 2B(a)(7) of the Act (12 U.S.C. 1422b(a)(5) and (a)(7)) and section 1375(a) of the Safety and Soundness Act (12 U.S.C. 4635(a)), the Finance Board may bring an action in the United States District Court for the District of Columbia for the enforcement of any effective order issued by the Board of Directors under this part. Such court shall have jurisdiction and power to order and require compliance with such order.

(b) *Limitation on jurisdiction.* In accordance with sections 2B(a)(5) and 2B(a)(7) of the Act (12 U.S.C. 1422b(a)(5) and (a)(7)) and section 1375(b) of the Safety and Soundness Act (12 U.S.C. 4635(b)), and except as otherwise provided in the Act, no court shall have jurisdiction to affect, by injunction or otherwise, the issuance or enforcement of any order issued by the Board of Directors under this part, or to review, modify, suspend, terminate, or set aside any such notice or order.

§ 908.12 Notice after separation.

The resignation, termination of employment or participation, or separation of a director or executive officer of a Bank shall not affect the jurisdiction

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and authority of the Finance Board to issue any notice and proceed under this part against any such director or executive officer, if such notice is served before the end of the two-year period beginning on the date such director or executive officer ceases to be associated with the Bank.

§ 908.13 Public disclosure of final orders.

(a) *In general.* The Finance Board shall make available to the public—

(1) Any written agreement or other written statement for which a violation may be redressed by the Finance Board or any modification to or termination thereof, unless the Finance Board in its discretion, determines that public disclosure would be contrary to the public interest;

(2) Any order that is issued by the Board of Directors and that has become final in accordance with this part; and

(3) Any modification to or termination of any final order made public pursuant to this part.

(b) *Delay of public disclosure under exceptional circumstances.* If the Finance Board determines in writing that the public disclosure, pursuant to paragraph (a) of this section, of any final decision and order of the Board of Directors would seriously threaten the financial health or security of a Bank, the Finance Board may delay the public disclosure of such decision and order for a reasonable time.

(c) *Documents filed under seal.* The Finance Board may file any document or part thereof under seal in any hearing commenced by the Finance Board under this part, if it determines in writing that disclosure thereof would be contrary to the public interest.

(d) *Retention of documents.* The Finance Board shall keep and maintain a record, for not less than six years, of all documents described in paragraph (a) of this section and all enforcement agreements and other supervisory actions and supporting documents issued with respect to or in connection with any enforcement proceeding initiated by the Finance Board under this part or any other law.

(e) *Disclosure to Congress.* This section may not be construed to authorize the